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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 250.

HENRY HERRMAN, CHARLES STERNBACH AND ABRAHAM HERRMAN, PLAINTIFFS IN ERROR,

vs.

CHESTER A. ARTHUR, LATE COLLECTOR OF THE PORT OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED JULY 16, 1885.

The bribery referred to, as appears from other parts of this good-tempered, conscientious, just and accurate argument, has reference to the employment of Mr. Goehler by appellee. Now, if your honors deem it worth your while, by referring to the testimony of Goehler, (A. 48 *et seq.*, p. 90 rec.,) you will find that Goehler applied for a situation to appellee, and that there was nothing out of the common in the transaction.

As for the perjury and subornation of perjury, I have no knowledge of them, but as the learned counsel who makes this charge was himself a witness in the cause, I presume he has some knowledge of the matter. I do, however, although regretfully, agree with him that there has been perjury in the Interference testimony, and have sincerely to regret that this Court may not be able to lay its hands upon the perjurers.

Respectfully submitted,

JAMES MOORE,

Appellee's Counsel.

127-360
127-363

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INDEX.

	Original.	Print.
Writ of error	1	1
Clerk's certificate and return	2	1
Summons	4	2
Certiorari	6	2
Bill of particulars	8	3
Complaint	10	4
Answer	12	6
Minutes of trial, &c.	14	7
Judgment	16	7
Bill of exceptions	18	8
Protest	19	8
Testimony of H. G. Torrey	19	9
Exhibit 8—Report of H. G. Torrey, November 9, 1876	20	9
9— " Torrey and Eaton, October 29, 1880	20	9
Testimony of Merritt Wickham	21	10
George T. Knight	22	10
John Wm. Entz	34	17
Joseph Strauss	35	18
Thos. A. Hague	35	18
Assignment of error	41	20
Joinder in error	44	20
Bond	46	21
Citation	48	22
Proof of service of citation	49	22

JUDD & DETWEILER, PRINTERS, WASHINGTON, AUGUST 10, 1887.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, Greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Henry Herrman, Charles Sternbach, and Abraham Herrman, plaintiffs, and Chester A. Arthur, defendant, a manifest error hath happened, to the great damage of the said plaintiffs, as by the record appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October, eighteen hundred and eighty-five, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the third day of June, in the year of our Lord one thousand eight hundred and eighty-five.

[Seal of U. S. Circuit Court, South. Dist. New York.]

TIMOTHY GRIFFITH, *Clk.*

The foregoing writ is hereby allowed.

HOYT H. WHEELER, *Judge.*

2 [Endorsed:] 5027. U. S. Supreme Court. Henry Herrman and *al.*, plaintiffs in error, *vs.* Chester A. Arthur, defendant in error. Writ of error. Stanley, Clarke & Smith, 160 Broadway, N. Y., att'ys for pl'ffs. Due service hereof admitted this 3d day of June, 1885. Elihu Root, U. S. dist. att'y & att. for def'ts.

[Stamped:] U. S. circuit court. Filed Jun- 3, 1885. Timothy Griffith, clerk.

UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error and in
3 obedience thereto, do hereby certify that the following pages, numbered from four to forty-nine, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Henry Herrman, Charles Sternbach, and Abraham Herrman, plaintiffs in error, against Chester A. Arthur, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this eleventh day of July, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States the one hundred and tenth.

[Seal of U. S. Circuit Court, South. Dist. New York.]

TIMOTHY GRIFFITH, *Clerk.*

4 *Summons.*

Superior Court of the City of New York.

HENRY HERRMAN, ABRAHAM HERRMAN, & CHARLES STERNBACH, Plaintiffs,
against
CHESTER A. ARTHUR, Defendant. } No. 7.

To the defendant:

You are hereby summoned and required to answer the complaint in this action, which will be filed in the office of the clerk of the superior court of the city of New York, at the court-house in said city, and to serve a copy of your answer to the said complaint on the subscribers, at their office, at No. 195 Broadway, in said city, within twenty days after the service of this summons on you, exclusive of the day of such service, and if you fail to answer
5 the said complaint within the time aforesaid the plaintiffs in this action will apply to the court for the relief demanded in the complaint.

Dated March 22d, 1877.

STANLEY, BROWN & CLARKE,
Plaintiffs' Attorneys, 195 *B'way.*

(Endorsed:) N. Y. superior court. Henry Herrman *et al.*, plaintiffs, against Chester A. Arthur, defendant. Summons. Stanley, Brown & Clarke, plaintiffs' attorneys, 195 Broadway, New York.

6 The President of the United States of America to the judges of the superior court of the city of New York, Greeting:

[L. S.] We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause commenced before you against Chester A. Arthur, defendant, by Henry Herrman & *al.*, plaintiffs, do therefore command you that the record and proceedings in said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 5th day of May, 1877, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness Morrison R. Waite, Esquire, Chief Justice of the Supreme Court of the United States, the 23d day of April, in the year one thousand eight hundred and seventy-seven.

JOHN I. DAVENPORT, *Clerk.*

STEWART L. WOODFORD,
United States Attorney, Attorney for Defendant.

7 [Endorsed:] 5027. U. S. circuit court. Chester A. Arthur *ads.* Henry Herrman & *al.* Copy. Certiorari. Stewart L. Woodford, attorney for defendant.

Take notice that the within is a copy of a certiorari this day issued out of the circuit court of the United States for the southern district of New York.

New York, Ap'l 23, 1877.

Yours, STEWART L. WOODFORD,
Attorney for Defendant.

Due service of a copy of the within and of the above notice is hereby admitted.

New York, Ap'l 23, 1877.

STANLEY, BROWN & CLARKE,
Plaintiffs' Attorneys.

8 *Bill of Particulars.*

Supreme Court, City of New York.

HENRY HERRMAN, ABRAHAM HERRMAN, & CHARLES STERNBACH
ag'st
CHESTER A. ARTHUR, Collector of the Customs of the United States at the Port of New York.

SIR: Please to take notice that the following is the bill of particulars of terms of the plaintiffs' demand in the above-entitled action, to wit: Moneys exacted by compulsion and duress and under color of the revenue laws of the United States by the defendant, as collector as aforesaid, from and paid by the plaintiffs on merchandise imported by the plaintiff-, as per schedule hereto annexed, with legal interest on said amount from the date of payment thereof as aforesaid.

Yours, &c., STANLEY, BROWN & CLARKE,
Plaintiffs' Attorneys, 195 Broadway, New York.

Dated New York, April 19th, 1877.

To S. L. Woodford, Defendant's Attorney.

9 *Schedule.*

Importers, H. Herrman & Co.

Description of merchandise—Calf hair and cotton goods.
Place from whence imported—Liverpool.
Name of vessel—Britannic.
Date of invoice—Oct'r 25th, 1876.

Date of entry at custom-house—Nov. 4, 1876.
Amount of duty paid in excess—370.50.
Date of payment of duty—Nov. 14, 1876.
Date of filing protest—Nov. 16, 1876.
Date of appeal to the Secretary of the Treasury—Nov. 16, 1876.
Date of answer of the Secretary of the Treasury—Feb'y 24, 1877.

9½ [Endorsed:] N. Y. superior court. Henry Herrman & *al.* ag'st Chester A. Arthur, collector of the customs of the United States at the port of New York. Bill of particulars. Stanley, Brown & Clarke, attorneys for plaintiff-, 195 Broadway.

10 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Circuit Court of the United States for the Southern District of New York, in the Second Circuit, of the April Term, in the year one thousand eight hundred and seventy-seven.

HENRY HERRMAN, ABRAHAM HERRMAN, & CHARLES STERNBACH
vs.
CHESTER A. ARTHUR. } No. 7.

The above-named plaintiffs in this suit come into court and, by Stanley, Brown & Clarke, their attorneys, give the court now here to be informed that heretofore, to wit, on the 22d day of March last past, this action was commenced in the superior court of the city of New York according to the laws of the State of New York and the rules and practice of said court in favor of the said plaintiffs against the defendant herein upon the causes of action hereinafter set forth and the summons therein filed with the clerk of said court; that the defendant afterwards, by his attorney, S. L. Woodford, Esquire, duly appeared in said action; and thereupon, on the 5th day of May, in the year one thousand eight hundred and seventy-seven, the said action was duly removed by writ of certiorari for further prosecution into this court, according to the act of Congress in such case made and provided, and the clerk of the said court did thereupon return the said writ, with the said summons, and duly file the same in this court, which allegations the defendant admits to be true.

Wherefore let the further proceedings and trial in this action be continued in this court.

And the said plaintiffs, by their said attorneys, complain of said defendant—

1st. That defendant was, during the times hereinafter named, collector of customs of the United States at the port of New York.

2nd. That plaintiffs were during said times partners in trade under the firm name of H. Herrman & Co., and as such duly imported and entered at the port of New York the goods described in the bill of particulars annexed.

3rd. That defendant, as such collector, exacted from plaintiffs as and for duties upon said goods the sum of four hundred and eighty-nine $\frac{15}{100}$ dollars.

4th. That by the laws of the United States the true duty upon said goods was one hundred and twenty-two $\frac{15}{100}$ dollars, but plaintiffs, in order to obtain said goods, were compelled to pay the sum of three hundred & sixty-seven dollars in gold coin in excess of the amount required by law.

5th. That plaintiffs filed with said defendant due and timely protest in writing upon each entry of said goods against his decision exacting such duty, setting forth distinctly and specifically the ground of objection thereto.

6th. Plaintiffs also made due and timely appeals in each case to the Secretary of the Treasury, who has affirmed the decision of defendant as to certain of said entries, and as to the rest of said entries has neglected to answer said appeals, and more than ninety days had elapsed since said unanswered appeals when this action was commenced.

7th. That the bill of particulars hereto annexed states for each importation separately the date of entry at the custom-house, of the payment of duty in excess, of the filing of the said protests; also the date of appeals to the Secretary of the Treasury and of his decisions thereon and the other particulars required by law, and is made a part hereof.

8th. The said sum of three hundred & sixty-seven dollars in United States gold coin so exacted has never been repaid to plaintiffs and is still due and owing to them.

Wherefore plaintiffs demand judgment against defendant for three hundred and sixty-seven dollars in United States gold coin, with interest on the several sums named in the bill of particulars from the several dates of payment as appear thereby.

STANLEY, BROWN & CLARKE,
Plaintiffs' Attorneys, 195 Broadway, N. Y.

11 STATE OF NEW YORK, }
City and County of New York, } *ss:*

—— ——, of the plaintiffs, being duly sworn, says he has read the foregoing complaint; that the same is true to his own knowledge, except as to those matters stated on information and belief, and as to those matters he believes it to be true.

—— ——.

Signed and sworn to before me — ——, 187–.

—— ——.

[Endorsed:] 5027. United States circuit court. H. Herrman *et al.* against Chester A. Arthur. Complaint. Due service of a copy hereof is hereby acknowledged. Service of a copy of bill of particulars waived this — day of ——, 187–. —— ——, att'y for def't. Stanley, Brown & Clarke, plaintiffs' attorneys, 195 Broadway, N. Y. To S. L. Woodford, Esq., U. S. att'y.

12 United States Circuit Court, Southern District of New York.

HENRY HERRMAN & *al.*
versus
CHESTER A. ARTHUR, Collector, etc.

The answer of the defendant herein, by Stewart L. Woodford, his attorney, to the complaint of the plaintiffs in the above-entitled action.

I. He admits he was, at the times in said complaint mentioned, collector of the port of New York, and, in such official capacity, received payment from the plaintiffs for and on account of duties due to the United States, under the laws thereof, upon certain importations of merchandise imported by said plaintiffs into the port of New York from foreign countries.

II. He alleges that any and all moneys received by him from plaintiffs at the times in said complaint mentioned were paid by said plaintiffs as a debt due by them to the United States, and not otherwise, and were received by defendant by virtue of his office as said collector and under the direction of the Secretary of the Treasury and for and on account of the United States, and were forthwith thereafter and before the commencement of this action or the service of any protest paid into the Treasury of the United States, and that the amount of said moneys so received from plaintiffs were the amounts due from them to the United States, according to the rate of duty imposed by law upon the several articles of merchandise by them imported and assessed with the duty, and no other sums than duties regularly assessed and ascertained and liquidated according to law upon the plaintiffs' import entry thereof were collected or received by defendant from the plaintiffs.

III. And defendant, further answering, denies that he has at this time sufficient information to form a belief as to the precise description of the merchandise contained in the several packages referred to in the said complaint by the marks and numbers and description there given, except in so far as to state, and defendant herein, answering, doth aver and state, that said merchandise was not dutiable according to the laws of the United States at the rates specified in the complaint.

IV. And defendant, further answering, admits that plaintiffs filed with defendant certain protests, but he denies that he has sufficient information to form a belief as to whether, upon the importations in question, protests and appeals were made by the plaintiffs, conformable to the laws of the United States, and defendant leaves plaintiffs to make such proof thereof as they may be advised.

V. And as to any other allegations in said complaint contained not hereinbefore fully answered or admitted defendant denies the same and each thereof, and leaves the plaintiffs to make such proof thereof as they may be advised.

Wherefore defendant demands judgment that the complaint be dismissed with costs.

STEWART L. WOODFORD,
United States Attorney, Attorney for Defendant.

13 [Endorsed:] 5027. U. S. circuit court, southern district of New York. Henry Herrman & *al. vs.* Chester A. Arthur, collector, etc. Answer. Stewart L. Woodford, United States attorney, attorney for defendant.

Due service of a copy of the within answer is hereby admitted. New York, May 29, 1877.

STANLEY, BROWN & CLARKE,
Plaintiffs' Attorneys.

14 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Thursday, the thirteenth day of December, in the year of our Lord one thousand eight hundred and eighty-three Present: The Honorable Alfred C. Coxe, sitting as circuit judge.

HENRY HERRMAN & *al.*
vs.
CHESTER A. ARTHUR. } 5027.

Now come the plaintiffs, by Stanley & Clarke, their attorneys, and move the trial of this cause. Likewise comes the defendant, by Samuel B. Clarke, ass't U. S. attorney, for the defendant. Thereupon a jury is impanelled and the court proceeds to trial. After hearing the evidence of the parties and the argument of counsel, on Monday, December 17th, 1883, the court directs the jury to find a verdict for the defendant.

Thereupon the jury render a verdict whereupon they find for the defendant.

15 On motion of counsel for plaintiffs, the court orders that the plaintiffs have a stay of proceedings of thirty days.

A copy.

TIMOTHY GRIFFITH, *Clerk.*

16 *Judgment.*

United States Circuit Court, Southern District of New York.

HENRY HERRMAN & *al.*
vs.
C. A. ARTHUR. } 5027.

The issues in this action having been brought on for trial before Mr. Judge Coxe and a jury, at a circuit court of the October term, 1883, and the issues having been tried and a verdict for the defendant have been duly rendered on the seventeenth day of December, 1883, and his costs having been adjusted at fifty-nine $\frac{35}{100}$ dollars.

Now, on motion of Elihu Root, United States attorney, for defendant, it is adjudged that the defendant have judgment against the plaintiffs upon the issues in this action, and that he recover the sum of $59.35, his taxed costs, and have execution therefor.

Judgment signed this 27th day of May, 1885.

JOHN A. SHIELDS,
Deputy Clerk.

17 [Endorsed:] 5027. United States circuit court. Henry Herrman & *al. vs.* C. A. Arthur. Judgment roll. Elihu Root, United States attorney, for defendant. Filed ——, 187–. Costs, $——. U. S. circuit court. Filed May 27th, 1885. Timothy Griffith, clerk.

18 Correct.

ELIHU ROOT,
U. S. Att'y for Def't.
J. G. CLARKE, *For Pl'ff.*

Bill of Exceptions.

United States Circuit Court, Southern District of New York.

HENRY HERRMAN, CHARLES STERNBACH, and ABRAHAM HERRMAN,
vs.
CHESTER A. ARTHUR, Late Collector, &c. } N. S. 5027.

The issues in this case came off for trial at the October term of this court, at a session held by the Hon. Alfred C. Coxe, district judge, sitting as circuit judge, according to the statute in such case made and provided, at the court-house, in the city of New York, on the 13th day of December, 1883, and in the course of said trial divers exceptions were taken by the counsel for the plaintiff to the rulings of said court, which said several exceptions were then and there allowed by the court and more fully appear in this bill of exceptions.

To sustain the issues on their part the plaintiffs' counsel introduced evidence showing that the plaintiffs imported into New York, in October and November, 1876, a quantity of goods, which were described in the invoices and entries of importation as "brown calf-hair seal skin" and as "brown calf hair," and those by the Britannic were invoiced and entered as "brown calf-hair lustre."

The duties were assessed as upon goods of wool, hair, and cotton, at fifty cents a pound and thirty-five per cent. ad valorem. Plaintiffs paid the duties under protest, a copy of one of which is as follows:

19 To the Hon'ble Chester A. Arthur, collector of the port of N. Y.:

SIR: We hereby protest against the liquidation of calf-hair goods imported by us in the S. S. from Liverpool.

The goods are returned by the U. S. appraiser as a manufacture of wool, hair, & cotton, and as such liable to a duty of 50 — per ℔ & 35% ad val.

We claim the goods are a manufacture of cow & calf hair & cotton, and as such are provided for under sect. 2499, 908, title 33, of the Revised Statutes of the U. S., & liable to a duty of 35% as a part manufacture of cotton (in accordance with Dep't decision, synopsis 1908, in the year 1874), or under schedule M, 1296 of same statute, as "all other manufactures of hair not otherwise provided for, 30% ad valorem."

We pay the amount exacted to obtain possession of the goods, and claim to have the difference refunded.

The other protests were similar, and were duly and seasonably filed, and appeals were duly and seasonably taken from the decision of the collector, whose decision was affirmed by the Secretary of the Treasury, and thereupon plaintiffs duly and seasonably brought this suit.

Plaintiffs then offered testimony identifying samples produced of the importations in controversy, which samples had been delivered for analysis for Prof. H. G. Torrey.

20 H. G. TORREY, being sworn, testified in substance that he was the Government assayer at the assay office in New York, and at the time of the examination was Government examiner of textile fabrics; that he examined the goods in question, and that there was no wool in them.

Plaintiffs' counsel then read in evidence the reports of Professor Torrey, as follows:

EXHIBIT 8.

"N. Y., *Nov. 9th*, 1876.

D. McKeever, Esq.

DEAR SIR: The samples of calf-hair goods, marked H. H. & Co., 7540, Britannic, left here by you, contained no wool.

Yours respectfully,

ROBERT G. TORREY."

EXHIBIT 9.

"N. Y., *Oct. 29th*, 1880.

Mess. Sternbach & Co.

GENTLEMEN: We have made an examination of the two samples of goods sent by you Oct. 26, 1886, small sample, marked S. S. Germanic from Liverpool, contained no wool.

Large sample, marked S. S. Germanic, from Liverpool, contained no wool.

Yours respectfully,

TORREY & EATON."

21 Plaintiffs' counsel then produced other witnesses, who testified that the goods in question were manufactured, the warp of cotton and the filling of cow or calf hair; that the goods in cases 7541–'5 cost under forty cents a pound, in 7540 over forty and under sixty cents a pound, in cases 7533–'9 under forty cents per pound.

Plaintiffs' counsel then read in evidence a portion of the synopsis of decision No. 1908 of the Treasury Department, made in 1874, as follows: "Calf-hair and cotton goods are held to be dutiable under the statutes of June 22, 1874, section 2499, at the highest rate at which any of its component parts are chargeable, namely, cotton, and not under the provisions for manufactures of hair."

Plaintiffs' counsel then rested.

Defendant's counsel, to sustain the issues on his part, called—

MERRITT WICKHAM, who, having been duly sworn, testified as follows:

I am assistant appraiser at the port of New York.

Defendant's counsel then offered to prove by the witness that other goods were imported into this country in 1875 and 1876 that resembled plaintiffs' goods in suit.

Plaintiffs' counsel objected to the evidence as incompetent, irrelevant, and immaterial.

The court overruled the objection and plaintiffs' counsel duly excepted.

The witness then, under said objection, ruling, and exception, testified that there were goods imported at the date specified that resesembled plaintiffs' goods.

Witness continued:

22 Such goods were goats' hair and cotton cloakings, called by some velours and imitations of seals, and used for the same purposes as calf-hair and cotton goods. The resemblance in appearance was such that I could not tell the difference without a microscope.

Q. You cannot tell the difference between them as far as appearance goes?

A. Not between the common goat and the calf goods. I am not speaking now of the Angora goat, the Cashmere goat, which is another thing. The common goat that this article is made of and the calf-hair goods cannot be distinguished without the microscope, in my opinion.

Being cross-examined, the witness said:

The duty of the appraiser is to report the dutiable classification. We classify under instructions from the Treasury Department frequently. At the present time we return such goods under the worsted class, "the hair of the alpaca goat and other animals." The return of the appraiser is but a simple classification for duty according to the tariff scale.

Defendant's counsel then called as a witness GEORGE T. KNIGHT, who, having been duly sworn, testified as follows:

I am a commission merchant; was in the woolen business in 1875 and 1876. I am familiar with goods of description of plaintiffs' samples; those goods are goat or calf-hair and cotton goods, and known as seal skins, used for coats and caps and laprobes; they are called imitation seal skins and imitation dog skins, used for same purposes and known by the same name in 1875 and 1876. Other goods known as seal skins were imported into this country
23 during those years, made of goats' hair; they were used for coats, caps, robes, &c. The mohair goods are almost uniformly much finer in appearance than the calf or cow hair and cotton goods.

Q. How does the appearance of the goats' hair and cotton goods correspond or differ from the appearance of the samples of the other goods that you now hold in your hands?

To this question plaintiffs' counsel objected as immaterial, irrelevant, and incompetent, and on the ground that defendant's counsel cannot now change his ground and undertake to justify the duty on a different ground from the assessment under protest; that, having assessed the goods as wool, defendant cannot now be permitted to show that they ought to have been assessed as goats' hair.

The court overruled the objection and plaintiffs' counsel duly excepted.

The witness continues:

When it was found (perhaps in the year 1867, I am not sure about that)—but when it was found no note was taken of the existence of such an article as calf hair or goat hair as being capable of being manufactured; then we began to draw our attention to it, and we perfected an article made solely of these materials. Prior to that we produced the same result exactly from wool, wool waste, mohair waste, calf hair, and goat hair as we could do it, but after we were restricted to the absolute use of calf and goat hair we carried on the product of the article in that form. Prior to this period, indiscriminately, any waste, low material that we could get, as derived from that finer quality which you have there, we used. Afterwards we bound ourselves by the terms of the law and excluded wool and everything else, because
24 we found we could spin these hairs that we had thought before we could not spin. For a considerable period these articles, or the material for these articles—the imitation seal skin and dog skin—were imported into this country manufactured from goats' hair and cotton, from mohair and cotton, and from wool, goat hair, and cotton, and the same imitation seal skin and dog skin were manufactured—were afterwards manufactured—for the same purposes, leaving out the wool, out of cow or calf hair and cotton. These samples (marked A, B, and C) of the defendant were the starting point of the whole range of the lower imitations which followed after, and this lot of samples (plaintiffs' samples) are illustrations or samples of the goods which were made to take the place of the mohair and goats' hair and cotton goods, and for the same purposes that the others were used for. The goats' hair and cotton goods were always of different grades.

Q. How did the grades run?—I mean what was the range of the grade of those goods.

A. I think I know what you want to reach. The very lowest grade of a pure mohair article would be of a value of more than double the price of your calf hair and cow hair.

Q. And how about the goats' hair and cotton?

A. They would be used indiscriminately with the mohair, and it is a mere question of which would best serve your purposes.
25 The goats' hair and cotton goods have a finer general appearance; mohair is the hair of the mohair goat.

Q. Is there anything else with which you are familiar, any other articles of commerce, which these plaintiffs' samples resemble more nearly than they do the goats' hair and cotton or mohair and cotton, which you have described?

A. Well, an article which I have not named so far used to largely enter into the composition of these goods, called "fibre."

Q. What was that?

A. It is a vegetable product, but it has not been used for some time; it was prior to 1875 and 1876.

Q. What was the character of those goods?

A. You could not tell the difference; you could not tell the introduction to it, except by its fineness, and it could not be used alone, apart from other materials, to resemble mohair; these vegetable-fibre goods were in imitation of mohair goods; the difference between the mohair goods and the goats' hair goods is entirely in the fineness. Your American goat, which you have here, produces what we should have to class as cow hair and calf hair; it is a very common material; the American goat is the same as the common goat in Europe, but mohair is an entirely different creature; it is a long silky fibre running up to a foot long.

Q. Were the goods introduced prior to 1876 manufactured from the hair of the common goat?

A. Yes; we always used everything that we could lay our hands to that was cheap.

26 Q. How did the quality of the goods manufactured from the hair of common goats and cotton compare with the quality of the calf-hair and cotton goods?

A. They would be used together. I have had goods made from buffalo hair in connection with the calf hair very successfully.

Q. And they would be substantially similar in quality?

A. You could not discriminate. In the fabric itself you could not discriminate afterwards. It is all a question of treatment.

Q. Take a fabric such as an imitation of dog skin made from the goats' hair (and by that meaning the common goat as distinguished from the mohair goat) prior to 1876, and subjected to the same general treatment in the way of finish as these plaintiffs' samples have been; would they produce similar goods?

A. The same sort of thing.

Q. How could you tell them apart?

A. You could not; your chemical or microscopical experts pretend to determine these goods, but we have no means.

Q. They could be told apart by a microscopic examination?

A. They say so, but I am very doubtful about that, because I have known of such curious decisions.

Q. Well, they were sold at the same price, were they not?

A. We sold generally for what we could get. We sold by the appearance. Of course, when they presented an inferior appearance they commanded a less price.

Q. But take these two articles—the one the goats' hair and cotton and the other calf's hair and cotton, which resemble each other in

the manner in which you have described; would they sell
27 for substantially the same price?

A. But then we would not come so closely together.

PLAINTIFFS' COUNSEL:

Q. As a matter of fact, they don't come so, do they?

A. No; not at all. There is a means of distinction whereby I can tell. You hand them to me and I touch them and tell which is which. I do it with my eyes shut.

DEFENDANT'S COUNSEL:

Q. I am asking about the hair of the common goat.

A. The hair of the common goat—I say they approximate so closely to each other that they would be the same thing substantially.

Q. And sell for the same price?

A. As between mohair that you are talking of and goats' hair, the common goats' hair of this country or England or Scotland, that you have been speaking of, there is scarcely anything in common.

Q. I am speaking of goats' hair goods as derived from the hair of the common goat.

A. Common goats' hair would be inferior to calf hair, and goats' hair of the common goat is even of a coarser texture than calf hair.

Q. How would it be about the price?

A. Well, it would be different, perhaps. Prices vary; to-day, for instance, I don't suppose calf hair per pound in the raw material would be worth but little more than half what it has been when there was a tide of trade for those goods, but the value of the stuff of which those goods are composed would not be over 6 or 7 cents a pound over in England and twenty odd cents a pound here.

By the COURT:

Q. He is asking you to compare the price of goats' hair goods with the other.

28 A. That would be impossible.

Q. As between goats' hair and calf hair?

A. They would only buy goats' hair to fill in, on account of its longer fibre and to use as an assistant on account of the strength of it and the length of the fibre; only the calf hair is uniformly a short hair—perhaps an inch or an inch and a quarter long.

Q. Take goods of the same sort, the one made of calf hair and the other made of goat hair?

A. I should not think that common goats' hair of the same description would be of any more value.

By DEFENDANT'S COUNSEL:

Q. As I understand, these calf-hair and cotton goods which you commenced to manufacture and import after it was ascertained that there was no specific mention of calf hair in the tariff were the same

thing as the wool, calf-hair, and cotton goods which had previously been manufactured, merely leaving out the wool?

A. Quite so.

Q. Were they the same, as far as appearance goes, as the wool, calf hair, and cotton?

A. They looked at first a little alike in fineness of texture, but afterwards it was found that by buying Russian calf hair and scouring the markets, in fact, of the world to get the finest calf hair that they could *lay* or lay their hands upon, then they were able to approximate very closely to the goods made before, and still later to produce the result desired without the introduction of any wool.

Q. They sold for the same prices?

A. Well, you see the same thing that you have there before you now. I can well recollect the time when, taking it at half a crown
29 (or two and six pence) of to-day—I can quite well recollect the time when substantially the same thing would command seven shillings and eight shillings a yard; in other words, the price was three times.

Q. I want to get the comparative prices for the manufacture of the calf-hair and cotton goods, leaving out the wool.

A. But they were not both articles in the market, because we could not bring them here at all—the article with the wool in it—and of course it would not pay to make both while we had a very large demand for those goods with the wool; when these goods came in at the lower duty, of course, it drove the other out.

Q. One drove the other out on account of cheapness?

A. Yes, sir; and in fact only two or three manufacturers of any consequence are in those goods to-day.

Q. Did these goods differ in any respect—these calf-hair and cotton goods—from the wool, calf-hair, and cotton goods the place of which they take now in manufacture?

A. No; not appreciably.

Q. Either in fact or in their appearance?

A. No.

Q. Nor in the use to which they were applied?

A. No; not in the use to which they are put and very slightly in appearance.

Witness on cross-examination testified:

Defendant's sample "A" is worth over eighty cents a pound; sample "B" in the same light would be worth much over eighty cents a pound; sample "C" I should not be prepared to say was—I should say it would be worth under eighty cents a pound; there is great weight there. These three samples are made of mohair; I tell from the feeling. Well, of course, while on one hand I can tell
30 the "A" sample you have before you without any assistance by the touch, it would be more difficult when you come to the dog there.

There is a wide range in the value of calf-hair and cotton goods (in the cost of them) in England. They would range from one and nine pence to four and six pence a yard, and even lower than that;

we cannot tell where we begun. (Sample shown witness.) I would rather decline to think it is silk. That (referring to another sample) is all silk, but this may be possibly silk and mohair. They have been both put together, and very effectively done, too. As far as I can see here, I should suppose that was mohair with silk, on account of its lustre; the mohair alone is very apt to show by the sooty surface; it is more like the real seal skin.

Q. They make the mohair as fine as that, don't they?

A. Oh, yes.

Q. What do you call that silk one that you have in your hand?

A. Silk plush.

Q. Is it in imitation of anything?

A. It is in imitation of seal skin, but not so good as mohair.

Q. What is that which I now show you?

A. That I would again call mohair and silk, but it has a larger proportion of silk. It may be all silk, but I think not.

Q. All three are imitations?

A. All three are imitations of seal skin.

Q. And one would be called seal skin cloakings?

A. Yes; one would be called seal skin cloakings, or some might say plush. I believe my own goods came invoiced as
31 plush; then they are mohair without silk.

One silk and mohair sample is marked No. 1.

Another silk and mohair is marked No. 3.

The silk sample is marked No. 2.

Sample marked "C" is called astrachan, because it is supposed to be made in resemblance of the astrachan sheep.

Sample "B" is called dog, because it is supposed to resemble the dog skin.

Sample "A" is called seal for the same reason—*i. e.*, because it resembles seal, or is supposed to.

Q. And all these three samples produced by the Government are made in imitation of and to take the place of the various skins, are they not?

A. Quite so. The value in 1876 in England was about nine shillings. Sample "B" a little higher—about eleven shillings; but it depends who the maker is; and the astrachan shown by the sample marked "C" I should put at about nine shillings.

Q. What were those fibre goods you spoke of?

A. That was only in existence for a very short time, and that arose from a desire to originate a closer approximation to the mohair goods that existed, so far as fineness was concerned, but there was a brittleness about the hair that required the support of cow or calf hair with it, or mohair, or some other material. The calf-hair and the mohair goods are made in a very different manner. They are both made to imitate seal skins and dog skins and astrachans.

Mohair fibre comes from the alpaca goat. The fibre is some-
32 times a foot in length, but the general length would be described perhaps from seven to eight inches—six to seven inches. Goats hair fibre is from one to two inches in length, ordinarily.

By DEFENDANT'S COUNSEL:

Q. How long is the common goat-hair fibre?

A. The common goat-hair fibre may be a foot, but you cannot tell exactly; the common goat hair does not enter to any appreciable extent into manufactures at all—that is, the common goat; I have scarcely known it.

By PLAINTIFFS' COUNSEL:

Q. That is the question that I asked you a little while ago; the goods made from the hair of the common goat.

A. It is more generally used for mats.

Q. The hair of the common goat is not ordinarily put into textile fabrics?

A. No; ordinarily we use it in small proportions as we can use it to produce a good effect.

Q. It would be used, perhaps, in combination with other materials?

A. It would be to some extent, but goats' hair is not calculated for the purpose.

Q. But goods are not made of the hair of the common goat to any extent?

A. It is not; I don't know of any such fabric.

Being further examined by counsel for defendant, witness said:

Q. You have spoken of two qualities of goats' hair goods, the mohair and the common goat hair. Will you please explain what you mean by common?

33 A. By common I mean such as we produce here in America or in England, or in similar climates. From the East we get all the finer mohair, which we don't produce, as far as I know, anywhere here in this country or in England. I have heard of some of the goats being brought here for that purpose, but they are very distinctive, though they are known as goats.

Q. I mean the lower qualities of the goat-hair and cotton goods that you have testified about?

A. I don't know of any such thing as a fabric of that nature made in and of itself; I don't think it could be used to produce a very nice article; I don't suppose it would be used to produce a very nice article, or even so nice an article as these commoner goods we have been looking at and talking about.

Q. So you do not refer, in your testimony as to the lower grades of goat's hair and cotton goods, to an article made entirely or mainly of the goat hair?

A. An article might have been made, but I cannot suppose it would be made to discriminate between calf hair and goods made of some goat hair.

Q. You testified to such articles being imported in and prior to 1876?

A. I did.

Q. Of what were they composed?

A. They would be composed at that time of calf hair and of the

common mohair—the residue of the finer mohairs after the process of manufacturing—and of wool or any other material which would produce the result in the most effective manner, giving the appearance of mohair and other things.

34 Q. What were the proportions of calf hair and cotton, goat hair, or coarser mohair or other materials that you have referred to?

A. You mean prior to this period?

Q. I speak of the time when it was found out that this material could be used—the time when it was discovered that the goat hair was not noted in the tariff.

A. At that time, I suppose twenty or twenty-five years ago, and back of the period you speak of, a very small proportion of cow hair and calf hair and a larger proportion of the mohair waste and common mohair material was used, because we were seeking then length of fibre, and it was only after the subject was finally tried to meet the question of the law here that methods were evolved whereby the goods were brought into being that we have now. They had not been in existence before that.

Q. In that way the coarser mohair and the common refuse mohair and the common goat hair and the refuse of wool and a small admixture of calf hair—all of these lower grades of goods, substantially similar to these which have been put in evidence here as plaintiffs' samples, were manufactured and introduced into this country for the purpose of being used as cloakings and for caps, and so on?

A. Quite so.

Q. And that is what you have referred to in your testimony?

A. Yes; quite so.

By PLAINTIFFS' COUNSEL:

Q. Each of them being made to resemble the skins of animals, and being used for the same purpose for which those skins are used?

A. Yes, sir.

JOHN WILLIAM ENTZ, who, being duly sworn, testified as follows:

35 I was in business with plaintiffs some eleven years ago—about 1872. The firm at that time imported imitations of seal skin and dog skins made of calf hair and cotton, and a fine class of goods made of mohair. I don't know whether there was any wool in them. I don't think there was any goats' hair in them at that time. We never had any analysis made. The low-price goods were originally made of all the waste rough mohair, dogs' hair, and some wool. Then there was a change, and the wool was left out in consequence of the tariff of 1867. The appearance of the goods was pretty much the same as those of the plaintiffs' samples 1 to 8. I don't know whether they were applied to the same purposes as the samples. They were suitable to be used for the same purposes. They were imitations of dog skins, seal skins, and astrachan.

Defendant's counsel then called a witness, JOSEPH STRAUSS, who, having been duly sworn, testified as follows:

I am an importer; member of Strauss, Kupfer & Co.; been familiar with goods like samples 1 to 8 twenty years. Before the tariff act of 1867 I think they contained wool, afterwards not. The Government exacted from us a duty of 50 cents a pound and 35 per cent. ad valorem, on the ground that there was wool in the goods.

Defendant's counsel then called a witness, THOMAS A. HAGUE, who, having been duly sworn, testified as follows:

Have been an importer since 1871, when the goods like plaintiffs' samples 1 to 8 first came. There might possibly be some of these goods that came to this country that had wool in them. I could not tell whether there was any wool in these goods without a
36 very close and careful examination. It was claimed by the department that there was wool in them, and, on the other hand, it was claimed by the importers that there was none. There might be some of these with wool in, and might not. I cannot tell.

Q. I don't mean those specific samples, but when those goods first came were there any that had wool in them?

A. There are a thousand and one grades, and some had wool and some not. Importers in this country carefully refrained from taking those that had wool in them, and carefully selected those that were supposed to have nothing but vegetable matter in them.

Q. Taking those that had wool in them and those that had vegetable fibre, how did they differ?

A. Simply in the component materials of which they were composed.

Q. Could you tell that from examination; could an appraiser tell that?

A. If it was very intricate he might not.

Q. In point of fact as to those goods that you saw, how closely did they resemble?

A. I understand you to say had I seen goods that contained wool?

Q. Yes.

A. I have seen samples that did contain hair.

Q. How did they compare in material, quality, texture, use, and appearance with those samples?

A. As a rule very different from these.

Q. How did they differ?

A. In the first place, in order to produce certain effects, you might have to use wool, and to produce certain other effects you might have to use goats' hair; to produe the combined effect you
37 would have to use both.

Q. That seems to be an identical proposition; but how did they differ—those that contained wool from those samples that you have before you?

A. They differed in being much softer.

Q. Do you know the goat-hair goods?

A. Yes, sir.

Q. Those were imported, were they?
A. Yes, sir.
Q. As long ago as 1871?
A. Yes, sir.

Being cross-examined by plaintiffs' counsel:

Q. I show you the sample marked No. 101. The mohair goods that you speak of were an article more like that?
A. Yes, sir.
Q. This class of goods of which a sample has just been shown you was made to imitate seal skins and dog skins?
A. Yes, sir.
Q. And also in a little different form they were made to imitate astrachans?
A. Yes, sir; if they have a curl in it they would be an astrachan.
Q. And those goods were used for the same purposes to which those skins are applied?
A. Yes, sir; and many others.
Q. Those wool goods that you speak of were entirely different from these?
A. That last sample (No. 101) that you just showed me of mohair goods—the object of using mohair is the lustre effect. If they wanted to get a stripe they would put a strip of wool to a strip of mohair; both being of the same color would show a different stripe.
Q. Those were finer goods than those?
38 A. Yes, sir: I never saw them in cheap grades. The goats' hair goods were imported as long ago as 1871. I paid duty on some goods that I suppose should pay 35 per cent., and I found that the duty paid amounted to about 264 per cent. and I protested, but I don't know whether we have entered any suits.

Being cross-examined, witness said:

The mohair goods that I last spoke of were more like the sample No. 101 now produced. They were made to imitate seal skins and dog skins and astrachans, if they had a curl, and they were used for the same purposes to which those skins are applied and many others. They were finer goods; I never saw them in cheap grades. Such goods were imported into this country in 1871, and were used for seal skins and dog skins for clothing people in the same way.

Counsel for both parties then rested.

Defendant's counsel then moved the court to direct a verdict in favor of the defendant on the ground that the evidence is clear and undisputed as to the two classes of goods, wool, hair, and cotton goods and goats' hair and cotton goods; that those goods existed and substantially resembled in every important particular these imported goods.

The court granted the motion and directed a verdict in favor of the defendant, and plaintiffs' counsel duly excepted, and because none of said exceptions so offered and made appear upon the records of said trial, therefore, on the prayer of the plaintiffs, by their counsel,

the judge has signed and sealed this bill of exceptions,
39 *nunc pro tunc*, as of the 17th day of December, 1883.

ALFRED C. COXE. [L. S.]

40 [Endorsed:] 5027. U. S. circuit court. Henry Herrman & *al. v.* Chester A. Arthur. Copy. Bill of exceptions. U. S. circuit court. Filed May 25th, 1885. Timothy Griffith, clerk.

41 *Assignment of Errors.*

Supreme Court of the United States.

HENRY HERRMAN, CHARLES STERNBACH, & ABRAHAM HERRMAN, Pl'ffs in Error,

ag'st

CHESTER A. ARTHUR.

Afterwards, to wit, on the 2d Monday of October, in the same term, before the justices of the said Court, at the Capitol, in Washington, came the said plaintiffs in error, by Stanley & Clarke, their attorneys, and say that in the record and proceedings aforesaid there is manifest error in this, to wit, in the various rulings hereinbefore excepted to, as appears of record, and that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given,
42 was given for the said defendant in error against the said plaintiffs in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiffs against the said defendant.

And the said plaintiff- prays that the judgment aforesaid, for the error aforesaid and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that they, the said plaintiffs, may be restored to all things which they have lost by occasion of said judgment, &c.

STANLEY & CLARKE,
Att'ys for Pl'ffs in Error.

(Endorsed:) U. S. Supreme Court. Henry Herrman & *als. vs.* Chester A. Arthur. Assignment of error. Stanley & Clarke,
43 att'y- for pl'ff- in error. Due service admitted this 13th day of June, 1885. Elihu Root, U. S. d's't att'y, att'y for def'ts. U. S. circuit court. Filed June 13th, 1885. Timothy Griffith, clerk.

44 *Joinder in Error.*

Supreme Court of the United States.

HENRY HERRMAN, CHARLES STERNBACH, & ABRAHAM HERRMAN, Plaintiffs in Error,

vs.

CHESTER A. ARTHUR, Late Collector, &c., Defendant in Error.

And afterwards, to wit, on the second Monday of October, in said term, the said defendant in error, by Elihu Root, his attorney, comes

here into court and say- that there is no error either in the record or proceedings aforesaid or in the giving of the judgment aforesaid.

And he prays that the said Supreme Court, before the justices thereof, now here, may proceed to examine as well the record
45 and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

ELIHU ROOT,
Attorney for Defendant in Error.

Endorsed: U. S. Supreme Court. Henry Herrman & *al.*, plaintiffs in error, *vs.* Chester A. Arthur, late collector, defendant in error. Joinder in error. Elihu Root, United States attorney, attorney for defendant in error. Due service of a copy of the within is hereby admitted. New York, June 13th, 1885. Stanley & Clarke, attorneys for plaintiffs in error. U. S. circuit court. Filed June 13th, 1885. Timothy Griffith, clerk.

46 *Bond for Damages and Costs.*

Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

HENRY HERRMAN & *als. vs.* CHESTER A. ARTHUR.

Know all men by these presents that we, Henry Herrman, Charles Sternbach, & Abraham Herrman, doing business as H. Herrman, Sternbach & Co., *and* are held and firmly bound unto the above-named Chester A. Arthur in the sum of five hundred dollars, to be paid to the said Chester A. Arthur; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 29th day of May, in the year of our Lord one thousand eight hundred and eighty-five.

Whereas the above-named Henry Herrman & *als.* have prosecuted their writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named obligors shall prosecute their writ of error to effect and answer all damages and costs if they fail to make their plea good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

H. HERRMAN, STERNBACH & CO. [L. S.]
DANIEL McKEEVER. [L. S.]

Sealed and delivered and taken and acknowledged this 29th day of May, 1885, before me—

JOHN S. DERBY,
Notary Public, N. Y. C. & Co.

47 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

Daniel McKeever, being duly sworn, deposes and says that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

DANIEL McKEEVER.

Sworn to this second day of June, A. D. 1885, before me—
JOHN S. DERBY,
Notary Public, N. Y. C. & Co.

[Endorsed:] Vol. —, page —. U. S. circuit court. Henry Herrman & *al. vs.* Chester A. Arthur. Bond for costs on error. Stanley, Clarke & Smith, proctors. Approved June 3, 1885. Hoyt H. Wheeler. U. S. circuit court. June 3, 1885. Timothy Griffith, clerk.

48 UNITED STATES OF AMERICA, ss:

To Chester A. Arthur, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October, eighteen hundred and eighty-five, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Henry Herrman, Charles Sternbach, and Abraham Herrman are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Dated June 3d, 1885.

HOYT H. WHEELER, *Judge.*

49 [Endorsed:] 5027. U.S. Supreme Court. Henry Herrman & *al.*, plaintiffs in error, against Chester A. Arthur, defendant in error. Citation. Stanley, Clarke & Smith, 160 B'way, N. Y., att'ys for pl'ffs in error. Due service hereof admitted this 3d day of June, 1885. Elihu Root, U. S. dist. att'y, att'y for def't.

[Stamped:] U. S. circuit court. Filed June 3, 1885. Timothy Griffith, clerk.

Endorsed on cover: S. New York C. C. U. S. No. 250. Henry Herrman, Charles Sternbach, and Abraham Herrman, plaintiffs in error, *vs.* Chester A. Arthur, late collector of the port of New York. Filed July 16, 1885.

17-563
17-363

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1887.

HENRY HERMAN et als.

vs.

CHESTER A. ARTHUR.

No. 250.

PLAINTIFFS' BRIEF.

STEPHEN G. CLARKE,
EDWIN B. SMITH,
Of Counsel.

BURGOYNE QUICK PRINTING CO., COR. WALKER AND CENTRE STREETS.

Supreme Court of the United States,

OCTOBER TERM, 1887.

HENRY HERMAN ET ALI.

vs.

CHESTER A. ARTHUR.

No. 250.

BRIEF FOR PLAINTIFFS IN ERROR.

Statement.

In October and November, 1876, plaintiffs imported into New York thirteen cases of goods of which the warp was wholly cotton with a woof or filling of cow-hair or calf-hair, *containing no wool*. They were described in the invoices and entries as "brown calf-hair seal-skins," "brown calf-hair" and "brown calf-hair lustre." (Rec. pp. 8, 9.)

These goods, the original defendant (then the Collector) assessed at a duty of fifty cents a pound and 35% *ad val.*, "as upon goods of *wool*, hair and cotton," in accordance with the appraiser's return. (Rec., 8.)

Against this, the importers duly protested, claiming the goods should be assessed according to their components; either as manufacturers of cotton, at 35%, or of hair, at 30%. (*Ib.*, bottom.)

All proper steps to raise the question of the legality of the exaction of the wool duty were seasonably taken. (Rec., 9, top.)

The goods were affirmatively shown to contain no wool (*Id.*), and no pretence was made at the trial that they did.

The goods in case 7540 cost over forty and under sixty cents a pound. Those in the other twelve cases cost less than forty cents. (Rec., 9.)

The plaintiffs proved these facts, also that the Treasury Department, in 1874, had promulgated a decision declaring such goods dutiable under R. S., Sec. 2499, at 35%, as manufacturers of cotton, and then rested. (Rec., 9, bottom.)

The first witness called by the Government was an assistant appraiser who, against the plaintiffs' objection and exception, was allowed to testify that, in 1875–6, certain goods were imported which resembled plaintiffs' goods in suit. (Rec., 10, top.)

This witness stated that, at the date of trial, such goods were returned for duty under the *worsted* clause—"the hair of the alpaca, goat and other like animals." (*Id.*, 10; fol. 22.)

The defense adduced other testimony to show the similarity, in appearance and use, of these importations to those made of goats' hair and cotton.

To the question eliciting such testimony the plaintiffs excepted as irrelevant, immaterial and incompetent, and upon the additional ground that the Collector, having assessed these goods as partly of *wool*, could not now justify this assessment upon the ground of a supposed *likeness* to articles made of *goats' hair* and cotton. (Rec., 11, top.)

This witness testified;—

"When it was found (perhaps in the year 1867, I am not sure about that)—but when it was found no note

was taken of the existence of such an article as calf-hair or goat-hair as being capable of being manufactured; then we began to draw our attention to it, and we perfected an article made *solely* of these materials. Prior to that we produced the same result exactly from wool, wool waste, mohair waste, calf-hair, and goat-hair as we could do it, but after we were restricted to the absolute use of calf and goat-hair we carried on the product of the article in that form. Prior to this period, indiscriminately, any waste, low material that we could get, as derived from that finer quality, which you have there, we used. Afterwards we bound ourselves by the terms of the law and excluded wool and everything else, because we found we could spin these hairs that we had thought before we could not spin. For a considerable period these articles—the imitation seal-skin and dog-skin—were imported into this country manufactured from goats' hair and cotton, from mohair and cotton, and from wool, goat-hair, and cotton, and the same imitation seal-skin and dog-skin were manufactured—were afterwards manufactured—for the same purposes, leaving out the wool, out of cow or calf-hair and cotton. These samples (marked A, B, and C) of the defendant were the starting point of the whole range of the lower imitations which followed after, and this lot of samples (plaintiffs' samples) are illustrations or samples of the goods which were made to take the place of the mohair and goats' hair and cotton goods, and for the same purposes that the others were used for. The goats' hair and cotton goods were always of different grades.

"Q. How did the grades run?—I mean what was the range of the grade of those goods.

"A. I think I know what you want to reach. *The very lowest grade of a pure mohair article would be of a value of more than double the price of your calf-hair and cow-hair.*

Q. And how about the goats' hair and cotton?

A. They would be used indiscriminately with the mohair, and it is a mere question of which would best serve your purposes. *The goats' hair and cotton goods have a finer general appearance. Mohair is the hair of the mohair goat.*

Q. *Is there anything else* with which you are familiar, *any other articles of commerce,* which these plaintiffs' samples *resemble more nearly than they do the goats'*

hair and cotton or mohair and cotton, which you have described?

A. Well, *an article which I have not named so far used to largely enter into the composition of these goods, called "fibre."*

Q. What was that?

A. It is a *vegetable* product, but it has not been used for some time: *it was prior to 1875 and 1876.*

Q. What was the character of these goods?

A. *You could not tell the difference;* you could not tell the introduction to it, except by its fineness, and it could not be used alone, apart from other materials, to resemble mohair. These vegetable fibre goods were an imitation of mohair goods. The difference between the mohair goods and the goats' hair goods is entirely in the fineness. Your American goat, which you have here, produces what we should have to class as cow-hair and calf-hair; it is a very common material. The American goat is the same as the common goat in Europe, but mohair is an entirely different creature; it is a long silky fibre running up to a foot long.

Q. Were the goods introduced prior to 1876 manufactured from the hair of the common goat?

A. Yes; we always used everything that we could lay our hands to that was cheap.

Q. How did the quality of the goods manufactured from the hair of common goat and cotton compare with the quality of the calf-hair and cotton goods?

A. They would be used together. I have had goods made from buffalo-hair in connection with the calf-hair very successfully.

Q. And they would be substantially similar in quality?

A. You could not discriminate. In the fabric itself you could not discriminate afterwards. It is all a question of treatment.

Q. Take a fabric such as an imitation of dog-skin made from the goats' hair (and by that meaning the common goat as distinguished from the mohair goat) prior to 1876, and subjected to the same general treatment in the way of finish as these plaintiffs' samples have been; would they produce similar goods?

A. The same sort of thing.

Q. How could you tell them apart?

A. You could not; your chemical or microscopical

experts pretend to determine these goods, but we have no means.

Q. They could be told apart by a microscopical examination?

A. They say so, but I am very doubtful about that, because I have known of such curious decisions.

Q. Well, they were sold at the same price, were they not?

A. We sold generally for what we could get. We sold by the appearance. Of course, when they presented an inferior appearance they commanded a less price.

Q. But take these two articles—the one the goats' hair and cotton and the other calf's hair and cotton, which resemble each other in the manner in which you have described; would they sell for substantially the same price?

A. But then we would not come so closely together.

PLAINTIFFS' COUNSEL: Q. As a matter of fact, *they don't come so*, do they?

A. No; *not at all. There is a means of distinction* whereby I can tell. You hand them to me and I touch them and tell which is which. I do it with my eyes shut.

DEFENDANT'S COUNSEL:

Q. I am asking about the hair of the common goat?

A. The hair of the common goat—I say they approximate so closely to each other that they would be the same thing substantially.

Q. And sell for the same price?

A. *As between mohair that you are talking of and goats' hair of this country, or England or Scotland, that you have been speaking of, there is scarcely anything in common.*

Q. I am speaking of goats' hair goods as derived from the hair of the common goat.

A. Common goats' hair would be inferior to calf hair, and goats' hair of the common goat is even of a coarser texture than calf hair.

Q. How would it be about the price?

A. Well, it would be different, perhaps. Prices vary; to-day, for instance, I don't suppose calf hair per pound in the raw material would be worth but little more than half what it has been when there was a tide of trade for those goods, but the value of the stuff of which those

goods are composed would not be over six or seven cents a pound over in England, and twenty odd cents a pound here.

By the Court:

Q. He is asking you to *compare the price* of goats' hair goods with the other?

A. *That would be impossible.*

Q. As between goats' hair and calf hair?

A. They would only buy goats' hair to fill in, on account of its longer fibre and to use as an assistant on account of the strength of it and the length of the fibre; only the calf hair is uniformly a short hair, perhaps an inch or an inch and a quarter long.

Q. Take goods of the same sort, the one made of calf hair and the other made of goat hair?

A. I should not think that common goats' hair of the same description would be of any more value.

By Defendant's Counsel.

Q. As I understand, these calf hair and cotton goods which you commenced to manufacture and import after it was ascertained that there was no specific mention of calf hair in the tariff were the same thing as the wool, calf hair, and cotton goods which had previously been manufactured, merely leaving out the wool?

A. Quite so.

Q. Were they the same, as far as appearance goes, as the wool, calf hair and cotton?

A. They looked at first *a little alike* in fineness of texture, but afterwards it was found that by buying Russian calf hair and scouring the markets, in fact, of the world to get the finest calf hair that they could buy or lay their hands upon, then they were able to aproximate very closely to the goods made before, and still later to produce the result desired without the introduction of any wool.

Q. They sold for the same prices?

A. Well, you see the same thing that you have there before you now. I can well recollect the time when, taking it at half a crown (or two and six pence) of today—I can quite well recollect the time when substantially the same thing would command seven shillings and eight shillings a yard; in other words, the price was three times.

Q. I want to get the comparative prices for the man-

ufacture of the calf hair and cotton goods, leaving out the wool.

A. But they were not both articles in the market, because we could not bring them here at all—the article with the wool in it and of course it would not pay to make both while we had a very large demand for those goods with the wool; when these goods came in at the lower duty, of course, it drove the other out.

Q. One drove the other out on account of cheapness?

A. Yes, sir; and in fact only two or three manufacturers of any consequence are in those goods to-day.

Q. Did these goods differ in any respect—these calf hair and cotton goods—from the wool, calf hair, and cotton goods the place of which they take now in manufacture?

A. No, not appreciably.

Q. Either in fact or in their appearance?

A. No.

Q. Nor in the use to which they were applied?

A. No; not in the use to which they are put and very slightly in appearance.

Upon cross-examination of this government witness, it appeared that two (at least) of the three samples put in by the *defendant*, for purposes of comparison, etc., were worth over eighty cents a pound. (Rec., 14, bottom.)

They were made of mohair, as was *easily perceived by the feeling. (Ib.)*

Of these "A" was, in trade, called "seal," because it is supposed to resemble seal-skin; "B" is called "dog" because resembling dog-skin; and "C" is called "astrachan," as resembling astrachan sheep-skin; and all these were "*made in imitation of and to take the place of the various skins.*" (Rec., 15 and 17, fol. 34.)

They were all worth, at least, nine shillings sterling per yard. (*Id.* 15.)

Having testified (as above noted, that *all three of the defendant's samples were* "*made of mohair*" (Rec., 14, fol. 30) this witness now added;—

"The calf-hair and the mohair goods are made in a

very different manner. They are both made to imitate sealskins and dogskins and astrachans. *Mohair fibre comes from the alpaca goat.* The fibre is sometimes *a foot in length,* but the general length would be described, perhaps, from seven to eight inches—six to seven inches. Goat's hair fibre is from one to two inches, ordinarily." (Rec. 15, bottom.)

"Calf-hair is *uniformly* a short hair; perhaps an inch, or an inch and a quarter long." (Rec. 13, fol. 28.)

By Defendant's Counsel. Q. How long is the common goat-hair fibre?

A. The common goat-hair fibre *may be a foot,* but you cannot tell exactly. *The common goat-hair does not enter,* to any appreciable extent, *into manufactures at all*—that is, the common goat. I have scarcely known it. (Rec. 15, bottom, and 16, top.)

Joseph Straus, called by the *defence,* testified that he had been familiar with the importation of this kind of goods for twenty years, *i. e.,* since 1863; and, though after 1867, *they contained no wool,* yet the pound duty, and 35% *ad val.,* was exacted "*on the ground that there was wool in the goods.*" (Rec., 18, top.)

Thomas A. Hague, also called by defendant, testified;—

Have been an importer since 1871, when the goods like the plaintiffs' samples 1 to 8 first came. There might possibly be some of these goods that came to this country that had wool in them. I could not tell whether there was any wool in these goods without a very close and careful examination. *It was claimed by the department that there was wool in them, and,* on the other hand, *it was claimed by the importers that there was none.* There might be some of these with wool in, and might not. I cannot tell.

Q. I don't mean those specific samples, but when those goods first came were there any that had wool in them?

A. There are a thousand and one grades, and some

had wool and some had not. Importers in this country carefully *refrained from taking those that had wool* in them, and carefully selected those that were supposed to have nothing but vegetable matter in them.

Q. Taking those that had wool in them and those that had vegetable fibre, how did they differ?

A. Simply in the component materials of which they were composed.

Q. Could you tell that from examination; could an appraiser tell that?

A. If it was very intricate he *might* not.

Q. In point of fact as to those goods that you saw, how closely did they resemble?

A. I understand you to say had I seen goods that contained *wool?*

Q. Yes.

A. I have seen samples that did contain *hair.*

Q. How did they compare in material, quality, texture, use, and appearance with those samples?

A. As a rule *very different* from these.

Q How did they differ?

A. In the first place, in order to produce certain effects, you might have to use wool, and to produce certain *other* effects you might have to use goats' hair; to produce the combined effect you would have to use both.

Q. That seems to be an identical proposition; but how did they differ—those that contained wool from those that you have before you?

A. *They differed in being much softer.*

Q. Do you know the goat-hair goods?

A. Yes, sir.

Q. They were imported, were they?

A. Yes, sir.

Q. As long ago as 1871?

A. Yes, sir.

Being cross-examined by plaintiffs' counsel:

Q. I show you the sample marked No. 101. The mohair goods that you speak of were an article more like that?

A. Yes, sir.

Q. This class of goods of which a sample has just been shown you was made to imitate seal-skins and dog-skins?

A. Yes, sir.

Q. And also in a little different form they were made to imitate astrachans?

A. Yes, sir; if they had a curl in they would be an astrachan.

Q. And those goods were used for the same purposes to which those skins are applied?

A. Yes, sir; and many others.

Q. Those wool goods that you speak of were entirely different from these?

A. That last sample (No. 101) that you just showed me of mohair goods—the object of using mohair is the lustre effect. If they wanted to get a stripe they would put a strip of wool to a strip of mohair; both being of the same color would show a different stripe.

Q. Those were finer goods than those?

A. Yes, sir; I never saw them in cheap grades. The goats' hair goods were imported as long ago as 1871. I paid duty on some goods that I supposed should pay 35 per cent., and I found that the duty paid amounted to about 264 per cent., and I protested, but I don't know whether we have entered any suits.

Being cross-examined, witness said:

The mohair goods that I last spoke of were more like the sample No. 101 now produced. They were made to imitate seal-skins and dog-skins and astrachans, (if they had a curl) and they were used for the same purposes to which those skins are applied and many others. They were finer goods; I never saw them in cheap grades. Such goods were imported into this country in 1871, and were used for seal-skins and dog-skins; for clothing people in the same way.

Counsel for both parties then rested.

Defendant's counsel then moved the Court to direct a verdict in favor of the defendant on the ground that the evidence is clear and undisputed as to the two classes of goods, wool, hair, and cotton goods and goats' hair and cotton goods; that those goods existed and substantially resembled in every important particular these imported goods.

Upon this motion of defendant's counsel, the Court directed a verdict in his favor, to which the plaintiffs excepted. (Rec., 19, bottom.)

The Court will take judicial cognizance of the fact that mohair is "the long silky hair or wool of the Angora goat, of Asia Minor." (Webst. Dict., *h. t.*)

MOHAIR, the hair of a variety of the common goat, famous for being as soft and fine as silk, and of a silvery whiteness. It is not produced anywhere but in the vicinity of Angora, in Asia Minor. (McCulloch, Com. Dict., *h. t.*)

Assignment of Errors.

The plaintiffs in error assign for error;—

I. The admission in evidence of testimony that other goods were imported into this country in 1875–6, that resembles plaintiffs' goods in suit. (Rec., 10, top.)

II. The admission of this question, and the testimony given in response thereto;—

"Q. How does the appearance of the goat's hair and cotton goods correspond or differ from the appearance of the samples of the other goods that you now hold in your hands?" (Rec., 11, top.)

III. Granting defendant's motion to direct a verdict in his favor, and directing such a verdict to be entered. (Rec., 19, bot., and 7 mid.)

IV. The judgment in favor of the defendant. (Rec., 7, bot., and 20.)

Statutes.

R. S., Sec. 2504 Sched. A, last clause, is :

Cotton braids insertings, lace, trimmings, or bobinet, and all other manufactures of cotton, not otherwise provided for, thirty-five per centum ad valorem.

Schedule M, " Sundries," has this provision :

Hair cloth known as " crinoline cloth," and all other manufactures of hair, not otherwise provided for, thirty per centum ad valorem.

The Wool Schedule, L, assesses

Woolen cloths, woolen shawls, and all manufacturers of wool of every description, made wholly or in *part of wool*, not herein otherwise provided for, fifty cents per pound, and (in addition thereto), thirty-five per centum ad valorem.

Flannels, blankets, hats of wool, knit goods, balmorals woolen and worsted yarns, and all manufactures of every description, composed wholly or *in part* of worsted, *the hair of the alpaca, goat, or other like animals*, except such as are composed in part of wool, not otherwise provided for, valued at not exceeding forty cents a pound, twenty cents per pound ; valued at above forty cents per pound and not exceeding sixty cents per pound, thirty cents per pound ; * * * and in addition thereto, upon all the above-named articles, thirty-five per centum ad valorem.

Though the similitude clause is familiar to the Court, and is claimed by us to have no bearing, we will print its exact language.

SEC. 2499. There shall be levied, collected, and paid, on each and every *non-enumerated* article which bears a similitude either in *material*, quality, texture, or the use to which it may be applied, to any article enumerated in this Title as chargeable with duty, the same rate of duty which is levied and charged upon the enumerated article which it most resembles in any of

the particulars before mentioned; and if any non-enumerated article equally resembles two or more enumerated articles, on which different rates of duty are chargeable, there shall be levied, collected and paid, on such non-enumerated articles, the same rate of duty as is chargeable on the article which it resembles paying the highest duty; AND ON ALL ARTICLES MANUFACTURED FROM TWO OR MORE MATERIALS, THE DUTY SHALL BE ASSESSED AT THE HIGHEST RATE AT WHICH ANY OF ITS COMPONENT PARTS MAY BE CHARGEABLE.

POINTS.

I.

The collector assessed duty upon our importations upon the assumption that they were made "in part of wool." (Rec., 8, fols. 18 and 19, and p. 18, top. *Ante*, p. 1).

The answer, ¶ II., rests the defense upon the correctness of this assessment (Rec., 6).

Upon the plaintiffs was thrown the burden of showing error on the part of the collector in *this* assessment.

Arthur vs. Unkart, 96 U. S., 118.

This was shown, by incontestible proof that the goods contained *no* wool. (Rec., 9 and passim. *Ante*, p. 2).

Thereupon the defendant sought to retain the money by proof of an entirely different fact from that at first, as well as in his answer, assumed by him to be true, and the basis of his assessment. At the trial the defense claimed them to be *like* (in appearance) to goods made of goats' *hair* and cotton. (Rec., 10 to 19. *Ante*, pp. 2 to 10).

As to to this, being an entirely new issue, raised by the Government upon the trial (*Ib*), the burden of proof was upon the defense.

Chung Yune vs. Kelly, 14 F. R., 642, top.
Same case in 8 Sawy., 415.

"The United States having classified this article differently from the invoice designation of it, and imposed a higher duty upon it than it would otherwise have been subjected to, the burden of proof is upon the United States to satisfy you that there has been a proper classification of this article by the collector, and that the rate of duty imposed by law only was exacted by him."

McKennan, C. J., Oct. 18, 1881, in Kennedy vs. Hartranft, 9 F. R., 18.
Ross vs. Fuller, 17 *Id.*, 224.

Our tariff legislation has always made the *invoice*, of which sworn triplicates are required, (R. S. Sec. 2853) the primary basis of the levy of customs-duty. Everything pertaining thereto refers to this document. R. S., Secs. 1715, 2785, 2837 to 2865 ; 2900 and *passim* in the customs-laws.

In his tariff speech of May 9, 1828, Mr. Webster observes :—

"These duties are ad valorem duties. Such duties, from the commencement of the Government, have been estimated by reference to the invoices as fixing the value at the place whence imported. When not suspected to be false or fraudulent, the *invoice* [italicised in the original] is the regular proof of value."

Any action of the collector, appraisers, or customs officers which is proved by admissible testimony not to be in accord with law or fact is "insufficient to displace the value declared on the entry."

Sampson vs. Peaslee, 20 How., 576.
Morlot vs. Lawrence, 3 Blatch., 123.
Vaccari vs. Maxwell, *Ib.*, 374.
Arthur vs. Morgan, 112 U. S., 501.

These citations are made in view of the fact that it is "the duty of the *appraiser* to report the dutiable classification." (Rec. 10, fol. 22.) It is part of the appraisal which, to supersede the invoice, must be correct.

Murphy vs. Arnson, 96 U. S., 131.

II.

The testimony (Rec., 10) "that other goods were imported into this country in 1875–6 that resembled plaintiff's goods in suit" was inadmissible, for several reasons.

I. The question was as to goods *imported*, instead of goods *enumerated*—which is the real point.

II. Nor is the *date* mentioned one to which the inquiry ought to refer. If articles made of goat's hair, etc., were intended, the reference should have been to the time of their enumeration, in the act of March 2, 1867.

III. But a fundamental objection is that it permitted and required the witness to testify (not to facts but) to a *conclusion* [resemblance] which it was peculiarly the province of the jury to draw from facts proven.

IV. The objection that the question initiated an inquiry as to the resemblance of goods made from *enumerated materials* is also suggested.

V. It raised a new issue, outside the pleadings.

McKyring vs. Bull, 16 N. Y., 304.
Codd vs. Rathbone, 19 *Id.*, 37, *39 mid.*
Weaver vs. Borden, 49 *Id.*, 286, *297 bot.*

III.

The objection to the question at the top of page 11 of the record, instituting a comparison between our goods and certain articles of goat-hair and cotton, is indicated in the first division of this brief. It presents an entirely different issue from that which the government originally took with the importers (see citations, *supra*).

If our goods were dutible either as manufactures of cotton (as the department had theretofore held) or as manufactures of hair (as this Court has, at this term, declared) the question of likeness could not arise under *any* form of pleading.

At any rate, it was inadmissible under existing pleadings (see *supra*).

IV.

By the government's own testimony, upon page 11 and at the top of page 12 of the record (*ante*, pp. 3, bot., and 4, top), it appears there was an article known to commerce, made of cotton and some "vegetable fibre," which our importations more nearly in appearance and use than it did those made of goat-hair and cotton.

Yet, without requiring the collector, thus shifting his ground, to show that the 'fibre' was *not* hemp, jute or flax (R. S., § 2504, Sched. C) or some other *enumerated* article, the Court absolutely directed a verdict for the defendant, because of the alleged similarity (in some respects) of our goods to those made of goat's hair and cotton.

Our position may be thus stated :—we claim to bring in these goods at 35% as manufactures in part of cotton; or at thirty per cent., as manufactures of hair. The collector said they were in part of wool. We prove the contrary, beyond dispute. He then says (without pleading it) we did not pay any more than we ought, because they look like goods containing goat-hair. In endeavoring to establish this fact, he proves there were goods known to commerce which our importations *more* nearly resemble than they did goat-hair goods, viz., those made of cotton and vegetable fibre. If this fibre were hemp, then the rate we claim was correct: if it were some non-enumerated fibre, then the presence of cotton, or of hair, must fix the rate, as we contend in our protest.

That is, the collector setting up *as a new defence* the resemblance to an enumerated article or material, and proving a *greater* likeness to goods made of cotton and

fibre, was bound to prove this a *non*-enumerated material before he could resort to the goat-hair clause—if the question of similitude was admissible at all, which we deny.

V.

A question is presented by the testimony as to the construction to be given the similitude clause, R. S., Sec. 2499. (*Ante*, pp. 2 to 10).

The scheme of the tariff, as found in the Revised Statutes, is—

(1) to duty certain articles by ordinary or commercial names and designations ;—

(2) others according to the material of which they are composed ;—

(3) and only those which do not come under any commercial designation, nor within the terms of any descriptive clause, are to have the assessment upon them determined by some analogy or relation to those things which are thus enumerated.

Either the article itself is mentioned, or its component parts, where these are known ; and likeness is resorted to only with regard to new articles, made from some material unknown to our tariff-laws.

As to those non-enumerated, eo nomine, which are not composed of specified materials, recourse is had to a similitude to something that is enumerated in one or the other of these two ways.

Nullum simile est idem : and *identity* must not be abandoned to run after *similarity*.

Arthur's exers. vs. Butterfield, No. 167, current term.

VI.

It was error to take the consideration of this case from the jury by directing a verdict. (Rec., 19, bottom.)

I. The testimony as to the alleged likeness to goods containing goat-hair, dutiable at 50 cents and 35%, was not clear, so that a jury would be *bound* to find its existence.

The mohair goods were "*much* finer in appearance" than ours. (*Id.*, 10, bot. and 11, bot.) The difference was readily perceptible to the touch. (*Id.*, 14 bot.) The cost was double. (*Id.*, 14–15.)

There was another fabric that our goods more nearly resembled. (*Id.*, 12, top.)

They differed so greatly in market value that no comparison could be instituted. (*Id.*, 13.)

The samples of goat-hair goods, introduced in defence, as the standard of comparison, were all *mohair*, *worth over eighty cents*, carrying the rate of duty imposed on our goods by the collector, although ours were conclusively proven to be all of a value below eighty cents. (*Id.*, 9, fol. 21, and 14 bottom.)

The issue in this cause is very different from that presented in Arthur vs. Fox, 108 U. S., 125.

The plaintiffs' importation is precisely the same as in their former case, Arthur vs. Herman, 96 U. S., 141, of which this Court then said;—

"The article in question is manufactured from cow-hair and cotton. Of these, the cotton is assessed at a higher rate of duty than the hair; and, therefore, *the article is assessed as a manufacture of cotton.*" (96 U. S., 142.)

In other words, the cotton classification for which we

contend, having been sanctioned by this Court, is the very one there sustained.

The goods imported by Fox were *not* so assessed. They were dutied at the wool rate,

> On account of the similitude they bore to manufactures composed wholly or in part of the hair of the goat *without wool*. (108 U. S., 127, top.)

The burden imposed upon those plaintiffs was to disprove the correctness of *this* assessment. (96 U. S., 118.) In our case, the collector levied duty upon our articles as being "in part of wool"—while the conclusive proof is that they contained *no* wool.

The Fox goods were, *in part, of the vegetable fibre mentioned in the present case*, and were

> of *equal quality* with the manufactures of cotton and goat's hair; because, in this case, they are charged with a duty of fifty cents per pound, *thus indicating a value of eighty cents a pound or over*, which calls for the highest duty per pound put upon the goat's hair goods. (108 U. S., 128.)

Our goods are proved to be worth only *forty* cents a pound,—recognized as being of such inferior value, character, and material as to bring but that price in the market—yet they are compared with the most costly goods, and dutied accordingly! If merchants could not easily determine the difference in character, there would be none such in the price.

In the Fox case, the error was peremptorily directing a verdict for the plaintiff.

In the present one, it is in peremptorily directing one for the defendant.

The question of resemblance (if admissible at all) was one which should have been submitted to the jury.

II. The testimony consisted of the opinions of professed 'experts'; being the conclusion of the several

witnesses as to the very fact in issue for the determination of the jury.

Even if the judge thought the appearance of the goods produced for inspection to be similar, nevertheless that was a matter upon which men might differ, and upon which those in the jury-box should pass.

As the Court said in Kenniston vs. Rowe, 16 Maine, 38, "the question of resemblance is matter of opinion," upon which witnesses might be indefinitely multiplied without affording any just basis for the judgment of the jury. It was added that, ordinarily, such question was not one calling for expert testimony, and no other would ever be admissible.

Following this decision, it was held in Massachusetts that *testimony* as to the alleged resemblance or unlikeness of a bastard to its putative father was inadmissible (Eddy vs. Gray, 4 Allen, 438, and Young vs. Makepeace, 103 Mass., 50); although the same Court allowed the child to be exhibited to the jury, to see if *they* perceive any resemblance.

Finnegan vs. Dugan, 14 Allen, 197.
Gilmanton vs. Ham, 38 N. H., 108.

If the witnesses produced by the defense were not called as experts, then their testimony, upon the very conclusion to be ascertained by the jury, was a nullity.

Robertson vs. Stark, 15 N. H., 109.
Concord vs. Greeley, 23 *Id.*, 237.
Protection vs. Harmer, 2 Oh. St., 452.

If they testify as experts, then their opinion, and the samples and facts upon which it is based should be together submitted to the jury.

It can hardly be imagined that Court should direct a verdict sustaining or denying the genuineness of the signature to a note, without submitting the same, together with those used as the standard of comparison, to the jury.

Judge TAYLOR says the same, whether two samples of wine were drawn from the same bin, two coins struck by the same die, *or whether two pieces of cloth be the product of the same loom* :—

"Still, even here the articles should be produced *that the jury may test the accuracy of the opinions* expressed by the witnesses, and may perceive that the reasons upon which these opinions are founded correspond with *the actual state and condition of the articles* themselves."

1 Taylor on Ev., 499, § 556.

The same author, as an expert upon the subject of evidence, expresses his appreciation of the testimony of experts generally.

"SEC. 58. Perhaps the testimony which least deserves credit with a jury is that of *skilled witnesses.* These gentlemen are usually required to speak, not to facts, but to *opinions;* and when this is the case, it is often quite surprising to see with what facility, and to what an extent, their views can be made to correspond with the wishes or the interests of the parties who call them. They do not, indeed, wilfully misrepresent what they think; but their judgments become so warped by regarding the subject in one point of view, that, even when conscientiously disposed, they are incapable of expressing a candid opinion. Being zealous partisans, their belief becomes synonymous with faith as defined by the Apostle, and it too often is but "the substance of things *hoped for*, the evidence of things *not* seen." To adopt the language of Lord CAMPBELL, "skilled witnesses come with such a bias on their minds to support the cause in which they are embarked, that hardly any weight should be given to their evidence."

1 Taylor on Ev., 79.

Whether goods assessed for duty are "of like description" to certain enumerated articles is eminently a question for the jury upon a comparison of them by that body whose *uncontrolled* verdict should decide it.

Greenleaf vs. Goodrich, 101 U. S., 278.

So is the question of similitude. Cases *supra*.
Gamble vs. Mason, 7 Am. L. R., 178.
Appeal dismissed, 21 How., 390.
Ross vs. Peaslee, 2 Curt., 501.
Recknagle vs. Murphy, 102 U. S., 199.

VII.

No question of similitude fairly arose in this case, to be decided either by Court or jury.

The goods are *enumerated*.

They are manufactures of hair, and we make that claim in our protest. (Rec., 8, last line.)

The applicable clause of the Rev. Stats. (*ante* p. 12). is a reproduction in *totidem verbis* of that construed in the cause of Arthur's execrs. vs. Butterfield, No. 167 of the current (Oct. 1887) term of this Court.

Miller vs. Butterfield, 125 U. S.

The provision which the collector there applied, and that which he set up in defense against us, are also verbally reproduced in the revision.

So that this Court has just held this language to be an enumeration of such articles as are thereby described.

If not a manufacture of hair, then these goods are manufactures of cotton; since it is proved (Rec. 9, fol. 21; *ante*, p. 2) that no other material entered into their composition;—which was not true of the Fox goods. (108 U. S., 125.)

"The goods in question were manufactured from two materials, of which cotton was one; and may, therefore, in general terms, be said to be manufactured of cotton, and they are not provided for by any *specific* enumeration in the Act of 1864. *They fall under the*

general clause of this act, just quoted." (See *ante*, p. 12.)

Arthur vs. Herman, 96 U. S., 141–2.

This Court has already declared that the fact that the importations might come under either of two descriptive clauses does not make them non-enumerated, so as to justify the collector's resort to the similitude clause. It is an instance of double enumeration. (96 U. S., 129.)

" The similitude act applies only to non-enumerated articles. *These goods are enumerated.* They fall under the description or enumeration of both sections, and if either were absent the description under the other would be sufficient. Thus, if it were not for that provision of the act describing ' manufactures of which steel is a component part,' there could be no difficulty in classifying them under that clause which describes ' manufactures of which glass shall be a component material ' ; and if it were not for the provision describing ' manufactures of which glass shall be a component material,' there could be no difficulty in classifying them under that clause which describes ' manufactures of which steel is a component part.'

The difficulty, it is said, may be solved in this way: 1st., that in the case of repugnant statutes, the latter statute, or, in the case of repugnant provisions of the same statute, the latter portion of the act, is deemed to be the last expression of the legislative will; and, 2d., that when the same article is twice enumerated, the lower rate of duty must prevail. To these points many authorities are cited. Potter's Dwarris on Statutes, pp. 170, 744; *Powers vs. Barney*, 5 Blatchf. 202; 2 Taunt. 109; 2 B. & Ad. 818; *United States vs. Johnson*, 17 Wall., 504; *United States vs. Ulman*, 5 Ben. 553."

Arthur vs. Sussfield, 96 U. S., 129, 130.
Approved in Arthur vs. Butterfield, cited *sup.*
Smythe vs. Fiske, 23 Wall., 374.
Solomon vs. Arthur, 102 U. S., 211, top.
Fisk vs. Arthur, 103 *Id.*, 431.
Barber vs. Schell, 107 *Id.*, 617.

Hair is last enumerated of these articles, and bears the lower duty.

In Arthur vs. Herman, 96 U. S., 141, it was not denied that the importation was dutiable and assessed as a manufacture of cotton, properly, as the Court found. (*Id.*, 142.) But plaintiffs there claimed the rebate given by the Act of 1872 to articles chiefly of cotton, although it was proved that cotton was not the chief component of their goods:—so the Court denied the claim.

This Court then said that the similitude clause did not apply; but that the phrase "manufacture of cotton" did. (*Ib.*)

In Arthur vs. Fox, 108 U. S., 125, the original record shows that the merchant claimed the benefit of this Act of 1872, on the ground that cotton was the chief value, while the proof showed this statement in the protest to be untrue.

The goods then in question were (as the court declared. *Ib.*, 128) "*non-enumerated.*" (Herman vs. Robertson, 33 F. R., 654.) *Ours are enumerated*, as the proof and decisions show.

Conceded by both parties to be non-enumerated, the question (in the Fox case) *was which clause of the similitude section* (2499) *applied.* Here, we say that section has *no* application.

Mr. Bliss' statement (in his brief in the Butterfield case) is correct, that the Fox protest did not present the issue of his case; nor of this case.

STEPHEN G. CLARKE.
EDWIN B. SMITH.
Of Counsel for Plaintiffs,
120 Broadway.

27-363
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In the Supreme Court of the United States.

OCTOBER TERM, 1887.

HENRY HERRMAN, CHARLES STERNBACH, and ABRAHAM HERRMAN, plaintiffs in error,
vs.
CHARLES E. MILLER AND DANIEL G. ROLLINS, executors of Chester A. Arthur, late collector of the port of New York.
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BRIEF FOR DEFENDANTS IN ERROR.

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BRIEF OF ARGUMENT.

In October and November, 1876, the plaintiffs imported at the port of New York goods invoiced and entered as "brown calf-hair seal-skin," "brown calf hair," and "brown calf-hair lustre." The merchandise was appraised, and duty assessed thereon at the rate of 50 cents per pound, and 35 per centum ad valorem (in pursuance of the similitude provisions of section 2499, Revised Stat-

utes), under the following clause of Schedule L, Revised Statutes, 471, which is a re-enactment of the same clause in the act of the 2d of March, 1867, which provides:

> Flannels, blankets, hats of wool, knit goods, balmorals, woolen and worsted yarns, and all manufactures of every description *composed wholly or in part of worsted, the hair of the alpaca*, goat, or other like animals, except such as are composed in part of wool not otherwise provided for, valued at not exceeding forty cents per pound: twenty cents per pound; valued at above forty cents per pound and not exceeding sixty cents per pound: thirty cents per pound; valued at above sixty cents per pound and not exceeding eighty cents per pound: forty cents per pound; valued at above eighty cents per pound: fifty cents per pound; and, in addition thereto, on all the above articles: thirty-five per centum ad valorem.

The goods were "manufactured, the warp of cotton, and the filling of cow or calf hair" (Rec., p. 9). The plaintiffs claimed the duty should have been assessed at 35 per cent. ad valorem, as a part manufacture of cotton, under the clause of Schedule A, Revised Statutes, p. 461, which declares:

> Cotton braids, insertings, lace, trimming, or bobbinet, and all other manufactures of cotton not otherwise provided for: thirty-five per centum ad valorem,

or, as a non-enumerated article, in accordance with the provisions of section 2499, Revised Statutes, which provides:

> There shall be levied, collected and paid on each and every non-enumerated article which bears a similitude, either in material, quality, texture, or the

> use to which it may be applied, to any article enumerated in this Title as chargeable with duty, the same rate of duty which is levied, and charged on the enumerated article which it most resembles in any of the particulars before mentioned; and if any non-enumerated article equally resembles two or more enumerated articles on which different rates of duty are chargeable, there shall be levied, collected and paid on such non-enumerated article the same rate of duty as is chargeable on the article it resembles paying the highest duty; and on all articles manufactured from two or more materials the duty shall be assessed at the highest rates at which any of its component parts may be chargeable.

The plaintiffs also claimed, alternatively, it should have been assessed under the following clause of Schedule M, Revised Statutes, page 476:

> Hair-cloth, known as 'crinoline-cloth,' and all other manufactures of hair not otherwise provided for: thirty per centum ad valorem.

This clause can have no applicability to the import in this case. It provides only for manufactures of hair not otherwise provided for. It is not pretended that the goods were a manufacture of hair. They are conceded to be a manufacture of two or more different materials—cow and calf hair and cotton. When an article is composed of more than one material it is not regarded as enumerated when a manufacture of one of the elements of which it is composed is provided for. The tariff legislation has established a well-defined nomenclature for describing articles that are dutiable according to their component materials. As illustrations—

First. When an article is composed wholly of one ma-

terial, as cotton, the language is "composed of cotton," as in schedule A, section 2504, Revised Statutes.

Second. When composed of two or more materials, and any one is intended to fix the classification, the language used is "composed wholly or in part of * * *." Or, "of which * * * is a component part," as in clause 3 of the wool schedule, Revised Statutes, page 471.

Third. When the component material of chief value, is to fix the classification, *it* is so stated.

But in no instance has an article composed of two or more materials been recognized in legislation as described by the general provision for one of the articles of which it is composed, unless the article is enumerated by a specific name.

The case of *Arthur* v. *Sussfield* (96 U. S. R., 128) illustrates the fact as applied to the statutes. In that case the good under consideration was composed of glass and steel, being spectacles. They were classified under the glass schedule, because that schedule provided for "manufactures of which glass shall be a component material." Had it not been for this clause they could not have been classified as a manufacture of glass, but would have been classified under a like clause in the steel schedule as a manufacture of which steel was a component part. While the case rules that such a clause is descriptive, it also, in substance, rules that the description is dependent upon the clauses in the glass and steel schedules above quoted, and thus inferentially rules that, independently of those clauses, it is not described in a general clause providing for a manufacture exclusively of one or the other of the materials.

By the appraisement in this case the value of the merchandise was fixed as above 80 cents per pound. In the case of *Hilton* v. *Merritt* (110 U. S. R., 97) it is ruled this appraisement is conclusive of the value.

The only question left is one of classification. The goods imported by the plaintiffs were manufactured expressly to evade the provisions of the clause of the tariff act of 1867, under which they were assessed, and the goods were so like the goods described in that section that they could not be distinguished from them without the use of a microscope, and were for the same use.

George F. Knight, a witness called on the part of the defendant, testified (R., p. 11):

When it was found (perhaps in the year 1867, I'm not sure about that)—but when it was found no note was taken of the existence of such an article as calf hair or goat hair as being capable of being manufactured; then we began to draw our attention to it, and we perfected an article made solely of these materials. Prior to that we produced *the same result exactly* from wool, wool-waste, mohair-waste, calf hair, and goat hair as we could do it, but after we were restricted to the absolute use of calf and goat hair, we carried on the product of the article in that form. Prior to this period, indiscriminately, any waste, low material that we could get, as derived from that finer quality which you have there, we used. Afterwards we bound ourselves by the terms of the law, and excluded wool and everything else, because we found we could spin these hairs that we had thought before we could not spin.

For a considerable period these articles, or the material for these articles—the imitation sealskin and dogskin,—were imported into this country man-

ufactured from goats' hair and cotton, from mohair and cotton, and from wool, goat hair, and cotton, and the same imitation sealskin and dogskin were manufactured—were afterwards manufactured—for *the same purposes*, leaving out the wool, out of cow or calf hair and cotton. These samples (marked A, B, C) of the defendant were the starting point of the whole range of the lower imitations which followed after, and this lot of samples (plaintiffs' samples) are illustrations or samples of the goods which were made to take the place of the mohair and goats' hair and cotton goods, *and for the same purposes that the others were used for.*

John William Entz, who had been in business with the plaintiffs prior to 1872, testified (Rec., p. 17):

I was in business with plaintiffs some eleven years ago—about 1872. The firm at that time imported imitations of sealskin and dogskins, made of calf hair and cotton, and a fine class of goods made of mohair. I don't know whether there was any wool in them. I don't think there was any goats' hair in them at that time. We never had any analysis made. The low-price goods were originally made of all the waste, rough mohair, dogs' hair, and some wool. Then there was a change, and the wool was left out *in consequence of the tariff of* 1867. The appearance of the goods was pretty much the same as those of the plaintiffs' samples 1 to 8. I don't know whether they were applied to the same purposes as the samples. *They were suitable to be used for the same purposes.* They were imitations of dogskins, sealskins, and astrachan.

Merritt Wickham testified (Rec., p. 10) as follows:

Defendant's counsel then offered to prove by the witness that other goods were imported into this

country in 1875 and 1876 that resembled plaintiffs' goods in suit.

Plaintiffs' counsel objected to the evidence as incompetent, irrelevant and immaterial.

The court overruled the objection, and plaintiffs' counsel duly excepted.

The witness under said objection, ruling and exception testified that there were goods imported at the date specified that resembled plaintiffs' goods.

Witness continued.

Such goods were goats' hair and cotton cloakings, called by some velours and imitations of seals, and *used for the same purpose as calf hair and cotton goods. The resemblance in appearance was such that I could not tell the difference without a microscope.* Joseph Strauss testified (R. p. 18):

I am an importer, member of Strauss, Kupfer & Co.; been familiar with the goods like samples 1 to 8 twenty years. *Before the tariff act of* 1867 *I think they contained wool, afterwards not.* The Government exacted from us a duty of fifty cents a pound and thirty-five per cent. ad valorem, on the ground that there was wool in the goods.

Other witnesses testified in general corroboration of these facts. There was no evidence rebutting this testimony.

With these facts indisputably established, any further discussion of the case is rendered unnecessary by the citation of the opinion of Chief-Justice Waite, delivered on the 19th of March, 1883, in the case of *Arthur* vs. *Fox* (108 U. S. R., 125), in which the goods were identical with those in this case, the duties collected the same, and every phase of the case now under consideration is fully discussed and decided in harmony with the judgment of the circuit court. The opinion referred to was doubtless

adopted by that court as the ground of the decision in this case.

The case now before the court and the case last cited are to be distinguished from the case of *Arthur's Executors* vs. *Butterfield* in which the opinion of this court was rendered on the 19th of March, 1888:

First. The goods in the case of *Arthur's Executors* vs. *Butterfield* were goat's hair goods only, as will appear by the record. That part of the goods which was similar to those in this case was not involved before this court.

Second. The goods in that case were imported before the revision of the statutes, and the opinion is based upon the act of 1870, as modified by the act of 1871, which amended it by adding "herein" after the word "otherwise," and before "provided for," which change is not carried into the revision of the statutes.

Third. The goods in this case were manufactured with the intent to evade the clause under which the collector classified them, by excluding the wool, and yet, by the process of manufacture, leaving the product in result substantially the same as it had been when the wool was included among the material.

Fourth. In this case the goods are not known as "haircloth," but as "velours" and "imitation of seal," or "imitation sealskins" and "imitation dogskins" (Rec., p. 10).

The case of *Arthur* vs. *Fox* above cited is, therefore, not overruled by the case of *Arthur's Executors* vs. *Butterfield*, but, it is respectfully submitted, remains decisive of this case.

G. A. JENKS,
Solicitor-General.

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I.

The Solicitor General's brief errs in its statement of the action of the appraisers and the defendant upon our goods.

They were *not* appraised nor assessed under the clause quoted at the top of the second page of his brief, nor as bearing any similitude thereto.

That clause expressly excludes goods "composed in part of wool," and the appraiser classified and the collector dutied as "in part of wool" our goods, which contained *no* wool. (See Rec., pp. 8 and 9.)

Acting upon an erroneous assumption, they adopted the *wool* clause, found upon page 12 of our brief, viz:

> "Woolen cloths, woolen shawls, and all manufactures of wool of every description, made wholly *or in part* of wool, not herein otherwise provided for, fifty cents per pound, and, in addition thereto, thirty-five per centum ad valorem."

Upon all *such* goods this rate of duty is assessed *regardless of value.*

Classifying our goods under *this* clause was not making any finding of value, because it was unnecessary and immaterial.

There was no claim that there was any difference between the parties as to the market value of the goods, only as to the *classification* for duty upon that value.

Thus the question presented was precisely the one which (under Hilton *vs.* Merritt, 110 U. S., 97, and all the decisions) we are allowed to raise, viz., "error in the *rate* and amount of duties imposed."

Hilton *vs.* Merritt was a disagreement as to the *value* of goods, as to the *classification* of which there was no controversy. Ours is a protest against the *classification* of goods, of which the *value* was never in dispute.

The first clause of the syllabus in 110 U. S., 97, does not so accurately state the law as it is in the opinion on page 106—*i. e.*, that the officers must act, not merely in good faith but "within the power conferred upon them by the statute," and the statute does *not* confer the power of dutying as "in part of wool" goods containing no wool.

II.

A second error (page 3 of Solicitor General's brief) is this:

> "It is not pretended that the goods were a manufacture of hair."

It was claimed by our protest, and upon trial, that they were dutiable as manufactures of hair. (Rec., 8 *et seq.*)

They were invoiced as "*calf-hair.*" (*Ib.*)

They were testified to as "calf-hair goods." (*Id.*, 9, Ex. 8.)

The unquestioned proof was of "the warp of cotton and the filling of cow or calf hair." (*Id.*, fol. 21.)

It is a matter of common knowledge that the woof makes up at least seventy-five per cent. of the material. At least it was for the jury, with the samples before them, to decide

whether they were or were not manufactures of hair. This issue they were not permitted to settle. If there were *any* evidence upon which they could so conclude it was error to take the cause from them.

R. R. *vs.* Stout, 17 Wall., 663.

Arthur *vs.* Sussfield, 96 U. S., 128, does say that mentioning the two materials of which the articles are composed does not make a case of non-enumeration but of double enumeration. To this extent it is pertinent.

III.

Upon page 5, the Solicitor General says:

> "The only question *left* is one of *classification.*"

That is the only one we ever started; we raised no other. The *collector* sought to change his ground at the trial and to prove these goods like goods named in the clause quoted by the Solicitor General, and it was then shown that, if they were so, they were wrongly dutied; but we always denied that they were dutiable under that clause.

The Solicitor General adds:

> "The goods imported by the plaintiffs were *manufactured* expressly to evade the provisions of the clause of the tariff act of 1867, *under which they were assessed*, and the goods were so like the goods described in *that* section that they could not be distinguished without the use of the microscope, and were for the same use."

This paragraph contains several errors.

We have already shown that they were *not* assessed under the section mentioned.

Secondly, as this Court has emphatically declared, it is *not* an evasion of our laws to so manufacture goods as to subject them to the lesser duty.

Foreigners are *not* bound so to run their looms or their mills in making articles to be brought here as to produce the largest possible customs revenue to the United States upon their importation.

In the sugar case it was avowed that the sugars were purposely darkened in their exterior coloring while in the process of manufacture, expressly that they might come into this country at the lower rate of duty. The cry of evasion was loudly raised in that case; but the late Chief Justice replied to this suggestion by the then Solicitor General: "No, not to *evade* our tariff laws, but to *meet* them."

BRADLEY, J., in the opinion in that case, observes:

> "Great stress is laid on the charge that sugars are manufactured in dark colors on purpose to evade our duties. Suppose this is true, has not a manufacturer a right to make his goods as he pleases? If they are less marketable it is his loss; if they are not less marketable *who has a right to complain? If the duties are affected there is a plain remedy.* Congress can always adopt such laws and regulations as it may deem expedient for protecting the interests of the Government. (Merritt *vs.* Welsh, 104 U. S., 701.)"

Congress has dutied goods "in part of wool" at the rate levied upon ours, which contained none. It has dutied hair goods at 30 per cent. If it were true (which it is *not*) that our goods were precisely like those having wool in their composition that would not affect us, provided we use the lower-dutied material expressly mentioned. All manufactures of hair not otherwise provided for are dutiable at 30 per cent. If *any* article (not so provided for) is made of hair, it is dutiable under the clause applicable to *all* manufactures of that material, and it is quite immaterial what it resembles (nor how nearly) nor what it is used for.

Referring, however, to the testimony quoted by the Solicitor General on the same page (5) of his brief, we would say

that "the same result exactly," which he italicizes, was obtained "from *wool*." (Rec., 11.)

The difference, which it took a microscope to discover, as mentioned upon page 7 of the collector's brief, was between the *importations in* 1875 of goat's hair and cotton velours and cloakings and those *then* brought in, made of calf hair and cotton, not between *our* importations and such goods.

This misapprehension leads to the erroneous assumption, near the bottom of the same page (7), that the goods in Arthur *vs.* Fox were "identical with those in this case."

They were *not* identical; the same duties were *not* assessed under the same statute, nor is every phase of the present case there decided.

This Court having said in that case that the duty laid indicated a value of eighty cents a pound or more (108 U. S., 128, quoted upon page 20 of our opening brief), we—denying that either value or similarity were in issue—showed *value* as an element tending to negative *similarity*. To meet the argument that the sum levied indicated a likeness to goat's hair and mohair goods we prove two things—(1), that the levy was *not* under the discriminating value clause; and (2), that our goods were *of the very cheapest grade of cow hair*, like those in Herman *vs.* Arthur (96 U. S., 141).

But if the collector's assessment has *any* efficacy on the present issue, we say the record shows that he did *not* assess our importations upon any pretense of *similarity*. He dutied them as "in part of wool." In Herman *vs.* Arthur (96 U. S., 141) and Arthur *vs.* Butterfield, No. 167 of present term, he dutied them as manufactures of cotton. In Arthur *vs.* Fox (108 U. S., 125) he *did* duty them under the clause which the Solicitor General erroneously thought he resorted to in our case, and this Court said that under *its* evidence the cause should have gone to the jury.

In the present instance the goods *were* made of cow hair and cotton. The collector *thought* they were *wool*, cow hair,

and cotton, and dutied them accordingly. The proof showing indubitably that they contained no wool left only the cotton and cow hair, of which the goods named in 96 U. S. and the Butterfield goods were made. But such was *not* the fact as to the *Fox* goods. The woof of those goods was calf hair *and* vegetable fibre, *this fibre (non-enumerated) being the very thing that the testimony in the present cause showed gave the strongest resemblance to goat's-hair goods.* (Rec., p. 12, top.)

IV.

The last page of the Government brief undertakes to distinguish the present cause from the Butterfield case.

It notes, "first," that those were *goat's-hair* goods only.

As Colonel Bliss tells me, and that record indicates, failure to protest or sue seasonably *did* eliminate the calf-hair goods from that litigation; but *that left the Government in its very strongest position*, which was, nevertheless, found untenable. This Court held that goods containing goat's hair (which *is* named in the statute) were, notwithstanding, dutiable as "manufactures of hair." *A fortiori*, then, goods which substitute for goat hair cow hair (which is not elsewhere nor *eo nomine* mentioned) *must* fall under this general provision. If the fact upon which the Government there chiefly relied, that goat's hair is specified, did not take Butterfield's goods out of this clause, certainly the hair not elsewhere named must come under this provision.

The "second" point of distinction is one which makes no difference. The language of former enactments is carried into the revision, which was intended only to embrace existing legislation, preserving the *status quo*. The word "herein," however, became superfluous, because there were no other tariff laws than those contained in that title of the Revised Statutes. In legal effect, the law was the same without as with this word.

The "third" paragraph is a reiteration of the charge of evading duty, already sufficiently considered; except this remark may be added, that no question of evasion was presented to the jury.

The "fourth" proposition contains an already-noted error of fact. The goods referred to upon the tenth page of the record (as called "velours," etc.) were *not* our goods, but certain importations said to have been made by somebody in 1875–'6.

EDWIN B. SMITH,
Of Counsel for Plaintiffs.